

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LEVI B. SCHMALE, JR.,

Petitioner,

v.

WARDEN MARILYN S. BROOKS,  
et al.,

Respondents.

Civil Action No. 05-324 Erie

**MEMORANDUM ORDER**

This petition for writ of habeas corpus was received by the Clerk of Court on October 31, 2005 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on December 5, 2005, recommended that the petition for writ of habeas corpus be dismissed for Petitioner's failure to prosecute. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Petitioner by certified mail at SCI Albion, where he is incarcerated, and on Respondents. Petitioner has filed no objections to Magistrate Judge Baxter's Report and Recommendation. After de novo review of the petition and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 22<sup>nd</sup> day of December, 2005;

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is DISMISSED for Petitioner's failure to prosecute.

The Report and Recommendation of Magistrate Judge Baxter, filed on December 5, 2005, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin  
United States District Judge

cm: All parties of record  
Susan Paradise Baxter, U.S. Magistrate Judge